Lawyers Worried by Nixon's Influence Over Investigation of Watergate Case

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WASHINGTON, April 24—The extent of President Nixon's influence over the Watergate investigation is a matter of growing concern among former members of the Justice Department and among legal scholars and lawyers associated with the case.

Lawyers around the country who were questioned by The New York Times said that the President's April 17 statement of his policy toward any of his aides found to be involved in the bugging of the Democrats was at best "ambiguous" and at worst "an attempt to close up the mouths of those willing to talk."

Although most declined to be quoted directly, they generally struck two themes in discussing the case.

One was that the President may have stripped away an important prosecution tool by apparently denying the use of grants of immunity from prosecution in exchange for testimony. In the past, the President has championed the use of witness immunity laws to get at figures higher up in organized crime.

The second theme was that there was a strong "conflict of interest" in the President's continuing to use the Department of Justice, which he controls, to investigate the situation. Many lawyers felt a special prosecutor should be appointed to handle the case.

Cooperation Expected

Mr. Nixon had said that he expects all concerned to cooperate fully with the grand jury investigating the case and, to a more limited extent, to cooperate with the Senate investigation.

On April 17, Mr. Nixon personally delivered a brief message to newsmen at the White House, reading from a prepared text because of its "technical nature." He said in part:

"'I have expressed to the appropriate authorities my view that no individual holding, in the past or at present, a position of major importance in the Administration should be given immunity from prosecution."

The President left the meaning of the statement open by refusing to answer any questions about it. The official position of his press aides is that they will not comment, either. Privately they deny that the President has any intention of interfering with the prosecution of the case.

In 1969, in his message to Congress on organized crime, Mr. Nixon asked for a new general law on witness immunity, saying it was needed "to strike at the leadership of organized crime and not just the rank and file."

Two laws on the subject are now in effect. One permits the Government to grant a general "immunity bath," as it is called, protecting a witness from prosecution of any kind relating to a criminal investigation. He is compelled to testify in exchange for guaranteed protection against the legal consequences of self-incrimination.

The second protects the witness only from the use of his statement in any prosecution against him. He may still be prosecuted but not on the basis of what he is forced to testify or on further information developed from his testimony.

Very little use of either statute has been made thus far in the Watergate investigation, according to persons close to the case.

Alfred E. Baldwin 3d, a former agent of the Federal Bureau of Investigation, was given informal immunity by the prosecutors handling the investigation. He testified that he had taken notes on conversations picked up by electronic listening devices installed in the Democratic headquarters.

Mr. Baldwin had no White House connections, according to his trial testimony.

Required to Testify

Another man, a minor figure in the case, Felipe de Diego, was ordered by Federal District Judge George L. Hart to testify before the grand jury under the immunity statute after he repeatedly invoked the Fifth Amendment's guarantee against being required to incriminate himself.

Earl J. Silbert, the United States Attorney who heads the prosecution, is said by sources close to the case to prefer offering the prospect of a lighter jail sentence after conviction rather than immunity from prosecution.

These sources say he argues that invoking formal immunity might allow some of the guilty to escape prosecution.

Under the laws, any such offer of formal witness immunity must be approved by the Attorney General, his deputy or a designated Assistant Attorney General — all officials appointed by the President.

Prof. James Vorenberg of the Harvard Law School termed the President's April 17 statement "ambiguous" and "a funny way to signal the Justice Department."

'Sanctimoniously Pious'

Another professor said that the President's statement was "sanctimoniously pious" on its face while "the real thirst is nobody can compel you to talk

A lawyer formerly with the Justice Department, now representing a client in the case, said that he never considered the statement to be anything except a prohibition of grants of immunity.

Another said, "I don't know whether the President can say X, Y and Z cannot get immunity. He was walking on eggshells there and wanted to let everyone know he's not going to bat for anyone. That's a real quagmire. Not 1 per cent of the lawyers in the United States understand those immunity statutes."

Charles Morgan Jr., director of the Washington national office of the American Civil Liberties Union, who is an attorney for one of the Cemocrats in the case, said of the President's statement:

"It means that one of the tools of the prosecutor is not to be used. We oppose grants of immunity on constitutional grounds but the Administration supported such grants in the Congress and in the courts.

'About-Face' Is Seen

"Any deviation in this case is a complete about-face on past policy.

"I don't know what an offer of immunity at the top level would produce in the way of testimony regarding the President. I'm against forcing testimony out of a prospective criminal defendant by any means, including this one."

Another prominent expert on criminal law, who has served in the Justice Department, commented, "The law does require a request for immunity be made by the Attorney General or his deputy. The significance of what the President has said is that no such official request for immunity would be made.

"If you wanted to really think the worst, this was an important intervention in the case."

Many of the lawyers expressed concern over the Presi-

dent's power to control the investigation itself.

Attorney General Richard G. Kleindienst has stepped out of the case, citing his "personal and professional relationships" with those involved. This left the investigation in the hands of Henry E. Petersen, Assistant Attorney General in charge of the Criminal Division.

Powers of President

Mr. Petersen reports directly to the President on the case. Mr. Silbert, the prosecutor, reports to Mr. Petersen.

Aside from potential knowledge of what action the grand jury might take, the executive branch of the Government also has two other important powers.

First, the President may pardon criminals, a power given him under the Constitution.

Second, the executive branch has the power to dismiss prosecution or to refuse to undertake prosecution.

The second power was reaffirmed in the 1965 decision of United States v. Cox, which was decided by the United States Court of Appeals for the Fifth Circuit.

"Henry Petersen is a nice guy," said one legal scholar who knows him. "He is a candidate for head of the Federal Bureau of Investigation. Now be becomes the investigator. "Why not appoint a special?"

Prof. Neal P. Rutledge of the Duke Law School, pointed out that, in the Teapot Dome scandal of the Harding Administration, an independent outside prosecutor was appointed.

"It is highly appropriate in this matter," he said. "The Attorney General has said he has a conflict of interest. How can those below him say they do not?"